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August 29, 2022

By ECF

Honorable David N. Hurd
United States District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street Utica, New York 13501

**Re: Dr. A., et al., v. Hochul, et al.,
21-CV-1009 (DNH)(ML)**

Dear Judge Hurd:

We write to advise the Court of a matter of public record affecting the status of Plaintiffs' pending claim for permanent injunctive relief. On August 11, 2022, the Centers for Disease Control and Prevention (CDC) issued new guidance on COVID prevention recommendations. (See attached highlighted copy.)

The new CDC guidance states as follows regarding vaccination status:

CDC's COVID-19 prevention recommendations *no longer differentiate based on a person's vaccination status because breakthrough infections occur*, though they are generally mild (16), and persons who have had COVID-19 *but are not vaccinated have some degree of protection against severe illness* from their previous infection...."

Guidance, p. 3 (emphasis added)

Respecting the "primary series" of vaccines mandated by New York State (but not "booster" shots), the CDC guidance states:

Receipt of a primary series alone, in the absence of being up to date with vaccination through receipt of all recommended booster doses, provides *minimal protection* against infection and transmission...

Guidance, p. 2 (emphasis added).

See We The Patriots USA, Inc. v. Hochul, 17 F.4th 266, 286 (2d Cir.), opinion clarified, 17 F.4th 368 (2d Cir. 2021), and cert. denied sub nom. Dr. A. v. Hochul, 142 S. Ct. 2569 (2022)(noting that the differences between the risk of medical versus religious exemptions from vaccination "may, after factual development, be shown to be too insignificant to render the exemptions incomparable...")

Respectfully submitted,

s/Michael G. McHale

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c: All counsel of record (via ECF)